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March 12, 2001

By Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, NW
Room TW-A325
Washington, DC 20554

RE: Comments and Technical Supplement of Pegasus Broadband Corp., ET Docket No. 98-206, RM-9147, RM-9245

Dear Ms. Salas:

Pegasus Broadband Corporation respectfully submits one original and eight copies of its Comments and Technical Supplement in the above-referenced proceedings. Additionally, electronic copies are being sent to the International Transcription Service, Inc.

Please direct any questions regarding this submission to the undersigned.

Sincerely yours,

Tony Lin

cc: International Transcription Service, Inc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 2 and 25 of the	)	ET Docket No. 98-206
Commission's Rules to Permit Operation of	)	RM-9147
NGSO FSS Systems Co-Frequency with GSO	)	RM-9245
and Terrestrial Systems in the Ku-band	)	
Frequency Range;	)	
	)	
Amendment of the Commission's Rules to	)	
Authorize Subsidiary Terrestrial Use of the	)	
12.2-12.7 GHz Band by Direct Broadcast	)	
Satellite Licensees and Their Affiliates; and	)	
	)	
Applications of Broadwave USA, PDC	)	
Broadband Corporation, and Satellite Receivers,	)	
Ltd. to Provide a Fixed Service in the 12.2-12.7	)	
GHz Band	)	
	)	

COMMENTS OF PEGASUS BROADBAND CORPORATION

PEGASUS BROADBAND CORPORATION

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Its Attorneys

March 12, 2001

Summary

Pegasus has a unique perspective on the development of Multichannel Video Distribution and Data Service. As a DBS service provider, Pegasus is concerned about the potential interference to DBS subscribers. At the same time, however, as a multi-platform video and data service provider, Pegasus views MVDDS as an important new opportunity to provide service through another platform. Pegasus believes that the proposals described below, in conjunction with the basic blueprint the Commission set forth in the Further Notice of Proposed Rule Making, will both protect DBS subscribers and allow it to rapidly deploy a competitive new service.

Pegasus generally supports the technical and licensing rules proposed by the Commission in the FNPRM. Pegasus, however, urges the Commission to use explicit operating requirements for MVDDS as the primary method of reducing interference. Such requirements substantially lessen the need to involve DBS subscribers and ensure the reasonableness of subscriber-related mitigation measures.

Pegasus also encourages the Commission to adopt a detailed mitigation process which provides a foundation to facilitate coordination between MVDDS operators and DBS service providers. The proposed mitigation process proposes a 60-day notification period prior to commencement of service; specifies the type of information required in the notice; details the types of mitigation measures contemplated; allocates to DBS service providers the ability to implement the mitigation measures directed at DBS receivers, while maintaining the responsibility of MVDDS licensees to assume the reasonable costs of such mitigation; establishes a continuing mitigation obligation for MVDDS operators consistent with the

Commission's secondary spectrum allocation; and permits the resolution of disputes through arbitration.

Pegasus generally agrees with the Commission's proposals regarding licensing and service rules. In order to encourage rapid deployment of service, Pegasus recommends that licenses be based on geographic service areas smaller than proposed by the Commission and allocated in frequency blocks of 125 MHz. If the Commission in the public interest decides to auction the licenses, Pegasus supports the use of the Commission's general auction rules and prohibitions on incumbent cable operators owning MVDDS licenses. To encourage the growth and development of the service, the Commission should permit partitioning and disaggregation, allow for flexible use of the spectrum, and non-common carrier regulatory treatment. The Commission should impose strict five-year initial buildout requirements and mandate that licensees providing video services retransmit local broadcast signals.

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	)	

Comments of Pegasus Broadband Corporation

Pegasus Broadband Corporation ("Pegasus") by its attorneys hereby files these Comments in response to the Commission's First Report and Order ("First R&O") and Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceeding.[1]

Background

Pegasus Broadband Corporation. Pegasus is one of the fastest growing media companies in the United States. The company has provided television service on three platforms

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[1] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-band Frequency Range*, ET

and has a demonstrated record of successfully deploying competitive services by building new facilities. It serves more than 1.4 million Direct Broadcast Satellite ("DBS") subscribers in 42 states and is the largest non facilities-based provider of DBS services in the United States and Canada. Moreover, unlike any other major multichannel service provider, Pegasus' primary focus is on rural and underserved areas. Pegasus also operates or programs ten television stations serving more than two million television households in smaller markets.

On April 18, 2000, Pegasus filed an application to provide video programming, including local television broadcast signals, and data and Internet services through terrestrial facilities operating in the 12.2-12.7 GHz band.[2] Pegasus proposed in its application to commit to independent testing and to operate on a secondary basis to protect DBS. *See* Pegasus Application, at Ex. 1 p. 1.

First Report and Order and Further Notice of Proposed Rule Making. In the First R&O, the Commission concludes that a new MVDDS can operate in the 12.2-12.7 GHz band under the existing spectrum allocation on a non-harmful interference basis to incumbent Broadcast Satellite Service ("BSS") and on an equal basis to the new Non-geostationary Satellite Orbit Fixed Satellite Service ("NGSO FSS"). *See* First R&O, at ¶¶213-218. The Commission proposes technical service rules and licensing rules for MVDDS systems and seeks input and comments regarding those proposals. The Commission also requests comments on the proper

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Docket No. 98-206, FCC 00-418 (rel. December 8, 2000). The FNPRM appeared in the Federal Register, 66 FR 7607, on January 24, 2001.

[2] *See* PDC Broadband Corporation, Application for License to Provide New Terrestrial Transport Service in the 12.2-12.7 GHz Band (filed April 18, 2000) ("Pegasus Application").

disposition of the applications of Northpoint, Pegasus and Satellite Receivers Limited. *See* FNPRM, at ¶¶325, 328.

Discussion

I. TECHNICAL RULES FOR SHARING AND OPERATIONS IN THE 12.2-12.7 GHZ BAND

Pegasus supports the Commission's spectrum sharing proposal, developed by the International Telecommunication Union Radiocommunication Sector in the context of limiting interference between BSS systems and NGSO FSS systems. *See generally*, First R&O, at ¶¶162-202. Pegasus believes that these same criteria, as applied to sharing between BSS and MVDDS systems, are presumptively fair.

Pegasus generally supports the Commission's sharing model, which establishes a mitigation zone around each MVDDS transmitter within which the MVDDS operator is accountable for mitigating interference to permissible levels.[3] Pegasus, however, believes that the Commission's technical rules must include specific operating requirements in order to ensure the reasonableness of DBS subscriber-related mitigation measures.[4] Pegasus provides and urges the adoption of a specific and detailed mitigation process through which MVDDS and DBS operators can address their mitigation concerns. Pegasus also proposes that MVDDS licensees pay the cost of reasonable mitigation efforts undertaken by DBS service providers.

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[3] *See generally* FNPRM, Appendices H & I.

[4] Some of the operating requirements are implicitly assumed in the FNPRM and others are fundamental components of the various interference studies conducted in this proceeding. *See generally*, Technical Supplement, attached hereto.

A. Operating Requirements of MVDDS Systems

1. Unavailability

Pegasus supports the Commission's proposal to limit the increase in DBS unavailability to 2.86% for any one MVDDS operator and no more than 10% for all MVDDS operators.[5] Accordingly, if the interfering C/I associated with a 2.86% increase in unavailability at any DBS receiver site is less than the value calculated pursuant to the Commission's sharing model, the impermissible interference must be mitigated. *See* Technical Supplement, Part B.2.

2. Maximum Power Limitations

Pegasus supports the Commission's proposal that the maximum transmit power for urban areas be limited to 12.5 dBm e.i.r.p. and, further, recommends that this maximum power be applied to all areas, including suburban and rural areas.[6] In addition to the problem that the Commission does not define "urban," there is little reason to believe that there will be less need to protect consumers in "non-urban" areas.[7]

Pegasus supports in part the Commission's proposal to relax its power limitations, subject to radiation hazard regulations,[8] "for those MVDDS systems with service areas containing mountain ridges that are over one kilometer from populated subscriber areas," or "those MVDDS

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[5] Pegasus opposes the Commission's alternative suggestion to determine the mitigation zone based on a fixed annual increase in unavailability to subscribers (for example, 60 minutes). *See* FNPRM, at ¶270. A percentage increase in the unavailability criterion is likely to be generally more fair to subscribers.

[6] *See* proposed 47 C.F.R. §101.113.

[7] Pegasus itself provides DBS services principally to rural areas, which include many urban-like areas such as small towns and villages. *See also*, Technical Supplement, Part A.1.

[8] *See* FNPRM, at ¶313.

systems located on tall manmade structures and natural formations that are adjacent to bodies of water or other significant and clearly unpopulated areas," so long as the MVDDS systems do not exceed the unavailability criteria. *See* FNPRM, at ¶311. Because of the potential for transmitters operating at such high power to interfere with DBS receivers at considerable distances, Pegasus urges the Commission to limit the PFD value at any DBS receiver to -181.5 $dBw/M^2/MHz$, the value generated by 12.5 dBm at 2 km for a 500 MHz band. *See* Technical Supplement, Part A.1. Pegasus also suggests that the Commission clarify the language of its exceptions so that an MVDDS transmitter may only exceed 12.5 dBm e.i.r.p. in areas where DBS receivers can not be located, as opposed to "unpopulated areas."

3. Rain Fade Power Reduction

Pegasus concludes that it is not necessary to require that MVDDS operators reduce the power of their transmitters during periods of DBS fading due to rain. *See* FNPRM, at ¶216. This method may reduce interference and be a useful mitigation tool, but it is not as cost effective as the other methods proposed by Pegasus in reducing interference and does not need to be an operating requirement of an MVDDS system. *See* Technical Supplement, Part C.1. An MVDDS operator, however, should be permitted to use this method voluntarily in situations where additional mitigation techniques are necessary.

4. Antenna Azimuth

Pegasus agrees with the conclusion that MVDDS transmitting antennas must point generally in a "southerly" direction, so that the transmission radiation will illuminate the backside of the DBS antennas, where they generally have the lowest gain. *See* FNPRM, at ¶259. However, because "southerly" can be interpreted as meaning any azimuth greater than 90 and less than 270 degrees, the Commission's informal requirement is too broad. Pegasus proposes

that the MVDDS operator must select the transmitting antenna azimuth, location, and horizontal beamwidth such that radiation of the 3dB beamwidth of the transmitting antenna is at least 48 degrees from the boresight azimuth of the DBS antennas in the region. Pegasus' proposal will help ensure that the interference will be received in the far sidelobes of DBS antennas. *See* Technical Supplement, Parts A.3 and A.5.

5. Maximum Degradation Level

The MVDDS system must be designed such that no existing or future DBS receiver shall experience a C/I degradation of more than 23 dB due to interference from any MVDDS transmitter.[9] DBS receivers were designed primarily to be unobtrusive consumer products, so there is little margin for additional noise. Direct interference was not seriously considered in the DBS receiver design process because DBS service was to operate essentially as the only service in the band. Thus, the available subscriber-related mitigation measures are modest and limited to shielding, replacing, or relocating the receive antenna. Because such techniques can be expected conservatively to suppress interference only up to 23 dB, MVDDS system designs must not exceed that basic interference threshold. The MVDDS operator may request (or the Commission may allow) a greater degradation level if it proposes new equipment and mitigation techniques, so long as the new measures do not impose unreasonable mitigation efforts and such measures are acceptable to the DBS service providers and their subscribers. *See* Technical Supplement, Part B.5.

6. Receive Antenna

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[9] The C/I is the interfering C/I calculated by a 2.86% increase in unavailability due to rain. *See* Technical Supplement, Part B.5.

Pegasus agrees with the Commission's proposal to require MVDDS receive antennas to be technically similar to home DBS antennas and have a minimum unidirectional gain of 34 dBi. *See* FNPRM, at ¶315. Pegasus notes, however, that such requirements should be further supplemented to minimize interference by requiring MVDDS receivers to have a G/T of at least 15 dB. *See* Technical Supplement, Part B.5.

7. Miscellaneous Requirements

The Commission proposes that MVDDS transmitters be exempt from the efficiency standards set forth in 47 C.F.R. §101.141, comply with the quiet radio zone criteria established in 47 C.F.R. §1.924, meet the digital emission mask required by 47 C.F.R. §101.111(a)(2), and comply with the frequency tolerance standard of 0.005% established in 47 C.F.R. §101.107. *See* FNPRM, at ¶¶314, 317. Pegasus agrees with these proposals, as well as any administrative rule change consistent with these Comments and necessary to implement the proposed operating requirements.

B. Mitigation Process

Pegasus concurs with the Commission's proposal that MVDDS operators, consistent with their secondary status, be responsible for correcting any interference to DBS receivers beyond that deemed permissible under the service rules. *See* FNPRM, at ¶274. Pegasus proposes a specific, detailed mitigation process consistent with the procedures and policies established for Fixed Satellite Service and other similar services. *See generally,* 47 C.F.R. Part 25.

1. Notice of Intention to Begin Service

Pegasus supports the Commission requirement that, prior to the commencement of MVDDS operations, licensees should give notice to DBS service providers[10] and certify to compliance with the Commission's regulations. *See* FNPRM, at ¶273. The DBS service provider is the entity that has the billing and customer service relationship with the DBS subscriber.[11] The notice should, at a minimum, contain the following information:

1. Address and telephone number of MVDDS operator and technical contact;
2. Location of each MVDDS transmitter in latitude and longitude;
3. Azimuth of the transmitter antenna;
4. Antenna height above the DBS plane (as determined by a site survey);
5. Antenna tilt, vertical & horizontal beamwidths and patterns, 360 degrees around the antenna;
6. Graphical illustration of the mitigation zone;
7. All other data necessary to compute the mitigation zone; and
8. Calculated PFD or C/I in the DBS plane out to the mitigation zone radius.

Pegasus proposes that once a DBS service provider has been served notice of commencement of operations, it should confirm the mitigation zone and assess the potential impact for harmful interference to each of its subscribers in the zone. Given the necessity of identifying the need for mitigation and the proper mitigation plan, shipping the necessary antennas and shields, contacting the subscribers, performing the actual mitigation, and verifying the effectiveness of any modifications, Pegasus believes that the proposed 30-day notice period is insufficient to ensure that DBS service providers have an opportunity to implement mitigation measures properly for DBS subscribers in the affected areas. Pegasus proposes instead that the

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[10] The MVDDS licensee should also give notice to the DBS platform operator.

[11] For example, in areas where an MVDDS facility interferes with a Pegasus DBS subscriber, Pegasus would be the DBS service provider responsible for directly addressing the mitigation efforts.

Commission adopt a 60-day notice period. Additionally, because Pegasus suggests that DBS service providers and not MVDDS operators perform mitigation measures, the MVDDS operator prior to commencing operations should file a certification stating that the MVDDS operator has cooperated in good faith with applicable DBS service providers and has resolved all identified cases of impermissible interference to DBS subscribers.

2. Mitigation Measures

Pegasus supports the Commission's proposal to hold MVDDS operators accountable for correcting impermissible interference to DBS receivers. *See* FNPRM, at ¶273. Based on data provided in the MVDDS application, the affected DBS service provider should assess the potential interference to each subscriber in the mitigation zone, develop a mitigation plan, and dispatch a local field technician to those subscriber sites where mitigation may be necessary. *See* Technical Supplement, Part B.4. The technician's first task is to determine if the MVDDS transmitter path is blocked, which would mean generally that no further mitigation is necessary. If the line-of-sight is not blocked, the technician should implement appropriate mitigation measures. *See* Technical Supplement, Part B.4. Once the MVDDS transmitter is operational, the technician, to the extent necessary, should measure the actual PFD or C/I at selected sites to confirm the effectiveness of the mitigation. If the level of interfering C/I is not met at any DBS receiver site because the projected PFD or C/I levels in the application are not met, the MVDDS operator must cease operations and modify its application and system design. In instances where the parties disagree as to the level of interference at any receiver site, the Commission should

follow a dispute resolution procedure similar to that established for local-into-local DBS services.[12]

Pegasus strongly opposes the Commission's alternative sharing method which requires interference mitigation based solely on complaints from DBS subscribers. *See* FNRPM, at ¶271. This approach would discourage responsible MVDDS operations and would be unfair to DBS subscribers and detrimental to DBS service. Subscribers are likely to complain only when increased unavailability is noticeably high, which means that interference would be extraordinary. Additionally, the subscriber has no meaningful method of measuring or calculating interference from an MVDDS transmitter and would certainly not understand the relationship between MVDDS operations and DBS reception. Moreover, it could take a customer several months to determine or realize that service has in fact degraded. A subscriber may also choose not to complain at all but simply to change video service providers, increasing churn. Consequently, this alternative proposal would severely impair the DBS industry and jeopardize its ability to maintain a high quality of service.

3. Performance of Mitigation

Pegasus proposes that the DBS service provider be directly responsible for the physical implementation of any mitigation measures involving DBS receivers.[13] Only an agent or representative of a DBS service provider would have the proper incentives to perform the mitigation in a competent and timely manner. From a purely administrative standpoint, the DBS

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[12] *See* 47 U.S.C. §339(c)(4)(B).

[13] The Commission proposes only that it expects the MVDDS and DBS licensees to find a mutually agreeable solution. *See* FNPRM, at ¶275.

service provider already has a billing and customer service relationship with the subscriber. Moreover, requiring DBS service providers to mitigate interference to DBS receivers would maintain the simplicity of the technical support network for DBS subscribers. There is little justification for asking DBS subscribers to ascertain the proper interference source or to distinguish between different technical support groups.

4. Mitigation Costs

Pegasus agrees with the Commission's conclusion that MVDDS operators, consistent with their secondary status in the spectrum, should be responsible for the reasonable costs of any mitigation measures implemented as a result of MVDDS operations. *See generally*, FNPRM, at ¶¶216, 274. Pegasus further proposes that starting from the receipt of the notice of commencement of operations, the DBS service provider may begin allocating and attributing to MVDDS operators all costs associated with the assessment and implementation of mitigation measures resulting from the operation or proposed operations of the MVDDS operator. Such costs would include, but would not be limited to, equipment and hourly labor costs associated with the calculation of mitigation zones, assessment of potential interference to subscribers in mitigation zones, and mitigation measures implemented at subscriber locations.

The DBS service provider should be required to take cost effective mitigation measures to reduce interference to an acceptable level.[14] The DBS service provider should submit to the MVDDS operator an itemized report of its mitigation costs. Undisputed reimbursement amounts should be paid within 30 days. Disputed amounts should be addressed by the Commission through arbitration.

5. Duration of Mitigation Obligations

Pegasus supports in part the Commission's proposal that MVDDS operators have a continuing obligation to provide technical information and advice to both current and new DBS subscribers located in mitigation zones. *See* FNPRM, at ¶274. Pegasus notes, however, that because Pegasus suggests having DBS service providers implement the actual mitigation measures, direct provision of technical information and advice should be supplied by the DBS service provider. MVDDS operators should only be held responsible for ensuring that DBS service providers have all the relevant technical information to provide assistance to DBS subscribers.

Pegasus opposes the Commission's proposal to limit an MVDDS operator's responsibility for interference mitigation to the first 18 months of operation of a facility, except to the limited extent described below. *See* FNPRM, at ¶274. As a general rule, DBS subscribers (or their corresponding service providers) should not be required to pay for mitigating interference from MVDDS transmitters. Such a policy would unfairly penalize future DBS subscribers and existing DBS subscribers who, through no fault of their own, experience interference from MVDDS facilities after an arbitrary mitigation period.[15]

There is a practical difference, however, in the interference environment in urban and rural areas. In urban areas, household densities are far higher than in rural areas and it is far more likely in urban areas that development and other environmental changes will also alter the

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[14] Such measures should also be acceptable to the DBS subscriber in question.

[15] For instance, blockage might be removed in a RF path to a subscriber, mitigation might not have been performed properly, or construction may change the MVDDS radiation pattern.

areas in which interference from MVDDS installations can be expected. As a result, the number of DBS subscribers affected is likely to be far higher in urban areas than in rural areas. Pegasus believes that these differences justify the Commission establishing a requirement for DBS service providers to deploy an improved receive antenna in those areas (defined as A.C. Nielsen "A" and "B" counties). This antenna should meet or exceed the far-out sidelobe requirements described in 47 C.F.R. §25.209. A variety of antennas might be appropriate (i.e. parabolic, flat or phased array antennas). Alternatively, a DBS operator might simply deploy slightly larger receive antennas, which will improve the rejection characteristics of the DBS antenna at minimal costs.[16] This requirement would insulate most urban DBS customers from the threat of future interference from MVDDS installations.

6. Arbitration

Pegasus supports the Commission's proposal to resolve interference and mitigation disputes through arbitration. *See* FNPRM, at ¶276. Additionally, Pegasus encourages the Commission to resolve potential billing reimbursement and other service rule disputes, to the extent possible, through arbitration.

C. MVDDS/NGSO FSS Sharing

1. NGSO FSS interference to MVDDS receivers

The Commission's proposed operating requirements for NGSO FSS systems should be adequate to protect MVDDS receivers. *See* Technical Supplement, Part C.2. DBS and MVDDS

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[16] In many urban areas where local-into-local broadcast stations are offered a larger dual-feed parabolic reflector is already necessary, and consumers have demonstrated no appreciable resistance to the slightly larger dish size.

systems have similar G/Ts and similar modulation, coding, multiplexing and channel plans. The relatively low elevation angle of MVDDS antennas should provide additional terrain blockage.

2. MVDDS interference to NGSO FSS terminals

MVDDS is a low-power, cellular, Fixed Service system with significant design constraints to limit interference to ubiquitous DBS receivers. Thus, MVDDS systems can be expected to cause less interference than many other Fixed Service systems, such as LMDS. An NGSO FSS terminal located in the vicinity of an MVDDS transmitter may experience harmful interference, but this can likely be mitigated by installing a shield or better antenna. In addition, because NGSO system earth stations operate dynamically in order to acquire and track satellites and to avoid interference from other NGSO satellites, they are readily able to avoid interference from MVDDS transmitters. *See* Technical Supplement, Part C.2.

Pegasus proposes a similar mitigation process for MVDDS/NGSO FSS coordination as Pegasus proposed for DBS/MVDDS coordination. *See infra*, Part I.B. However, because MVDDS and NGSO FSS have equal status in the spectrum, Pegasus proposes that mitigation costs in these cases be shared equally by both parties.

II. LICENSING AND SERVICE RULES

A. Service Area

Pegasus supports the Commission's proposal to license MVDDS operators on a geographic basis and further suggests that licenses should be based on Basic Trading Areas ("BTAs") and Major Trading Areas ("MTAs"), instead of Designated Market Areas ("DMAs").[17] Because the population associated with service areas based on MTAs and BTAs

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[17] Pegasus originally applied for licenses based on DMAs.

will be smaller in many cases, the costs of such licenses will likely be lower, providing greater economic opportunity for a wider variety of applicants to participate in the spectrum auction.[18] Additionally, smaller service areas are more consistent with the technical aspects of MVDDS service, namely short-range cellular transmissions of data and video.

B. Channeling Plan

Although Pegasus has applied for 500 MHz licenses, Pegasus proposes licensing of four, 125 MHz blocks to unaffiliated applicants in each service area would enhance competition. Such capacity is more than sufficient to supplement DBS services, as proposed by one applicant, and is adequate to allow the initiation of low-cost, basic, multichannel service.

Moreover, awarding multiple licenses per market should provide a competitive incentive for licensees to build quickly. The Commission, however, should not prohibit licensees in the same market from aggregating their licenses in order to provide a more comprehensive service. Permitting aggregation will allow the development of multiple business models enabling the best mode of service for consumers to evolve.

C. Use of Licenses

Pegasus agrees with the Commission's proposal to allow the use of the spectrum to include one-way video and data services. *See* FNPRM, at ¶289. Additionally, Pegasus concurs with the Commission's proposal to preclude mobile and aeronautical operations because of complications they would impose on DBS and NGSO operations. *See id.*

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[18] The Commission has authorized Broadband PCS licenses using BTAs and MTAs. *See* 47 C.F.R. §24.202.

D. Regulatory Obligations

Pegasus agrees generally with the Commission's proposal to permit "flexible" use of MVDDS, subject to a requirement that MVDDS licensees, who provide video services or have significant common ownership with a satellite carrier (as defined under the Satellite Home Viewer Improvement Act),[19] should be required to retransmit all local broadcast signals generally available in the area.[20] A mandatory carriage requirement is consistent with the Congressional interest in a new service that will enable the provision of local television broadcast signals into rural areas[21] and is permissible under the Commission's general rulemaking authority.[22] It would be a failure of policy for the Commission to authorize these services and have licensees elect not to provide the very service that that has driven the Commission's actions in this proceeding.

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[19] *See* Satellite Home Viewer Improvement Act, Pub L. No. 106-113, 113 Stat. 1501, Appendix I, §1008; *see also* 17 U.S.C. Section 119(d)(6).

[20] This requirement should be subject to reasonable and customary limitations including, but not limited to, channel limits and a requirement that the station deliver a clean signal to the point at which the programming for the cell is aggregated and processed.

[21] *See, e.g.*, Local TV Act, Pub. L. 106-553, Section 1002 (Dec. 21, 2000) ("The purpose of this Act is to facilitate access, on a technologically neutral basis and by December 31, 2006, to signals of local television stations for households located in nonserved areas and underserved areas."); *see also*, the Satellite Home Viewer Improvement Act, Pub L. No. 106-113, 113 Stat. 1501, Appendix I, §2002 (stating that the Commission shall within a year "make a determination regarding licenses or other authorizations for facilities that will utilize, for delivering local broadcast television station signals to satellite television subscribers in unserved and underserved local television markets, spectrum otherwise used for commercial use.").

[22] *See* 47 U.S.C. §303(r).

Pegasus concludes that it is reasonable for the Commission to require MVDDs licensees to comply with network nonduplication, syndicated exclusivity and sports blackout rules.[23] These rules all are designed to protect local television stations, and thus are consistent with the Commission's goals for MVDDS.[24] Similarly, Pegasus does not object to adoption of reasonable leased access requirements for MVDDS. Additionally, to the extent that an MVDDS licensee provides multichannel video programming distribution, Pegasus supports application of retransmission consent,[25] navigation devices,[26] and closed captioning and video description requirements.[27]

E. Treatment of Incumbent Licensees

Pegasus agrees with the Commission's conclusion that MVDDS and NGSO FSS licensees must protect incumbent Private Operational Fixed Services ("POFS") licensees operating in the 12.2-12.7 GHz band. *See* FNPRM, at ¶¶293-294.

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[23] *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals*, CS Docket No. 00-2, Report and Order, FCC 00-388 (Nov. 2, 2000).

[24] *See, e.g., Carriage of Digital Television Broadcast Signals,* CS Docket Nos. 98-120, 00-96, 00-2, First Report and Order and Further Notice of Proposed Rulemaking, FCC 01-22, at ¶109 (Jan. 23, 2001).

[25] 47 U.S.C. § 325(b); 47 C.F.R. § 76.64.

[26] 47 C.F.R. § 76.1200 et seq.

[27] *See* 47 C.F.R. Part 79 (2000), *as amended* (2001). *See also Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230 (2000); Memorandum Opinion and Order on Reconsideration, FCC 01-7 (rel. Jan. 18, 2001).

F. Regulatory Status

Pegasus concurs with the Commission's suggestions that MVDDS services should be provided on a non-common carrier basis. *See* FNPRM, at ¶295.

G. License Eligibility

In order to promote the growth of the MVDDS service and to realize the competitive benefits it can bring to consumers, Pegasus supports the Commission's proposal that incumbent cable operators be precluded from acquiring an attributable interest in an MVDDS licensee that is located within a franchised cable service area, unless the service area has been found by the Commission to be characterized by effective competition. *See* FNPRM, at ¶¶296-301. In contrast to cable, DBS operators have an incentive and can be expected to work with MVDDS licensees to provide local television broadcasts to their customers, particularly to those in smaller markets. In fact, as Northpoint originally noted in its Petition for Rule Making, the proposed service would "enable DBS providers to compete more effectively against cable," and "add value to DBS and promote localism by curing the local television signal problem."[28]

To the extent that the Commission remains concerned that some DBS licensees may behave anticompetitively, Pegasus suggests that a strong build-out requirement would eliminate such fears.[29] Under no conditions should DBS providers, such as Pegasus, which only market DBS services and have no space-based facilities, be ineligible for MVDDS licenses.

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[28] *See* Northpoint Petition for Rule Making, at 5-13.

[29] *See infra*, Part II.H.

H. License Term and Renewal Expectancy

Pegasus agrees with the Commission's proposal for ten-year license terms with a renewal expectancy similar to that of licenses in the 24 GHz and 39 GHz bands. *See* FNPRM, at ¶303. Pegasus supports aggressive buildout requirements, but also believes that the service rules should be drafted with an appreciation of the difficulty of actual deployment of this service, for which small cell sizes will be the norm, in an era of difficult zoning restrictions. The Commission should provide adequate time for the service to mature. The Commission's proposal to adopt initial five-year build out requirements with a demonstration of service to a significant portion of the population or land area of the licensed area appears to be a reasonable balance of these interests. *See* FNPRM, at ¶303.

I. Partitioning and Disaggregation

Pegasus supports the Commission's proposal to permit partitioning and is in favor of disaggregation. *See* FNPRM, at ¶¶305-306. However, Pegasus notes that if licenses are granted on a BTA and MTA basis, the relevant markets would be smaller and partitioning and disaggregation are less likely to be necessary.

J. Auction Procedures

If the Commission decides that a competitive auction for award of the licenses is in the public interest, Pegasus supports the use of the general competitive bidding rules set forth in Part 1, Subpart Q of the Commission's rules. *See* FNPRM, at ¶¶331-339. As noted earlier, Pegasus urges the Commission to grant licenses for geographic areas based on BTAs and MTAs. Smaller market areas would provide greater economic opportunity for a larger pool of applicants to participate in the licensing process.

K. Miscellaneous Licensing Proposals

Pegasus supports the Commission's various administrative changes to its regulations in order to accommodate MVDDS service, including, for instance, the Commission's proposals to amend its Frequency Table and Part 101 of its rules,[30] extend the application of the OTARD rules to MVDDS antennas,[31] apply the foreign ownership rules to MVDDS licenses,[32] and require an annual report.[33]

III. PENDING APPLICATIONS

Pegasus has submitted an application to provide video and data services in the 12.2-12.7 GHz band through terrestrial facilities.[34] The application was complete in all respects and timely filed. As a result, Pegasus opposes any proposal by the Commission that would permit grant of any pending application without due consideration of Pegasus' application. In any event, issues regarding the cut-off status of mutually exclusive applications filed prior to the FNPRM must be guided by the Commission's application processing rules and not by this rulemaking proceeding.[35] Pegasus is amenable to the Commission's suggestion of limiting MVDDS

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[30] *See* FNPRM, at ¶287.

[31] *See id.* at ¶¶315-316.

[32] *See id.* at ¶300.

[33] *See id.* at ¶307.

[34] Pegasus incorporates by reference its previous responses to Northpoint's allegations that its application is untimely. *See* Pegasus Development Corporation, Opposition to Motion to Dismiss (filed June 7, 2000); Pegasus Broadband Corporation, Response to *Ex Parte* Submission (filed September 21, 2000).

[35] Pegasus has requested that the Northpoint applications be dismissed because of its *ex parte* violations in related proceedings. *See* Pegasus Broadband Corporation, Petition to Dismiss or Deny, (filed August 21, 2000); *see also* In the Matter of Broadwave Albany, L.L.C. *et al.*, DA 01-109 (January 17, 2001), *petition for reconsideration pending* (filed February 16, 2001).

applications to those received by the Commission as of the date of the FNPRM,[36] if the Commission believes that such a result would expedite the provision of service and would otherwise be in the public interest.[37] In such a scenario, competitive auctions would be necessary only to the extent that the applicants could not resolve any issues of mutual exclusivity between the applications.

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[36] *See* FNPRM, at ¶329.

[37] Such a result would be consistent with the Local TV Act and with the Commission's goal to facilitate the rapid deployment of services.

Conclusion

For the foregoing reasons, Pegasus Broadband Corporation proposes that the Commission adopt rules and policies for MVDDS that are consistent with these Comments.

Respectfully submitted,

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March 12, 2001